STATE OF MICHIGAN

COURT OF APPEALS

DEPARTMENT OF NATURAL RESOURCES, Plaintiff/Counter-Defendant-Appellee,	UNPUBLISHED June 5, 2001
v	No. 222645 Houghton Circuit Court
CARMODY-LAHTI REAL ESTATE, INC., Defendant/Counter-Plaintiff-Appellant.	LC No. 97-010318-PZ

Before: Sawyer, P.J., and Smolenski and Whitbeck, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment declaring that plaintiff owned a clear fee title to a former railroad right of way consisting of a strip of land bordering defendant's property. Defendant asserted that the right of way had been merely an easement, and that the easement had been extinguished by abandonment or through a tax sale of the property. We reverse and remand.

Defendant asserts that an easement was created in 1873 by a deed from Quincy Mining to Mineral Range Railroad. Actions to quiet title are equitable in nature and are reviewed de novo, although the trial court's factual findings are reviewed for clear error. *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Rd Comm*, 236 Mich App 546, 550; 600 NW2d 698 (1999); *Sackett v Atyeo*, 217 Mich App 676, 680; 552 NW2d 536 (1996). Courts must follow the plain language in a deed if there is no ambiguity. *Taylor v Taylor*, 310 Mich 541, 545; 17 NW2d 745 (1945); *Farabaugh v Rhode*, 305 Mich 234, 240; 9 NW2d 562 (1943). If the deed is absolute in its terms, parol evidence tending to show a different agreement or meaning is inadmissible. *Bennett v Eisen*, 64 Mich App 241, 243-244; 235 NW2d 749 (1975); *Paskvan v Kuru*, 5 Mich App 374, 376; 146 NW2d 677 (1966).

There is no ambiguity in the deed here in question. By the plain language of the deed, Quincy Mining "granted . . . a right of way . . . " to Mineral Range Railroad. Once the question of what a "right of way" is has been resolved, there is no need to look beyond the document to later acts or later deeds to determine what was intended. *Quinn v Pere Marquette R Co*, 256 Mich 143; 239 NW2d 376 (1931), recognized the apparent dilemma in "right of way" cases that had preceded it, and resolved them in clear language:

> "Right of way" has two meanings in railroad parlance—the strip of land upon which the track is laid—and the legal right to use such strip. In the latter sense it may mean an easement. But in this state and others the character of the title taken to the strip depends upon the language of the conveyance.
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> Where the grant is not of the land, but is merely of the use or of the right of way, or, in some cases, of the land specifically for a right of way, it is held to convey an easement only. [*Id.* at 150.]

A deed granting "a right of way" has been held to create an easement. *Warden v Linebarger*, 182 Mich 1, 4-5; 148 NW 481 (1914); *Mahar v Grand Rapids Terminal R Co*, 174 Mich 138, 142; 140 NW 535 (1913). A deed granting "the right to flow with water" the land described has been held not to be a fee but only a right to use the land. *Chanter v Roberts*, 322 Mich 545, 551; 33 NW2d 923 (1948). A deed granting a parcel "described as follows, to wit: The right of way for a railroad . . ." has been held to be an easement. *Jones v Van Bochove*, 103 Mich 98, 100; 61 NW 342 (1894).

The rule holds in more recent cases as well. Where a deed granted "a strip of land for a RIGHT OF WAY [sic]" and further referred to the property as "said easements," an easement was found. *Boyne City v Crain*, 179 Mich App 738, 744; 446 NW2d 348 (1989). A condemnation order conveying a "right of way upon and across lands of Henry Salee . . . for the uses and purposes of said Railroad Company" was adjudged an easement. *Westman v Kiell*, 183 Mich App 489, 494; 455 NW2d 45 (1990).

In contrast, fees have been found where the land itself is conveyed, even if limited to "railroad purposes," as in *Quinn*. *Quinn, supra* at 150-151. For example, a grant conveying "a parcel of land fifty feet in width . . . to be used for railroad purposes only" was deemed a fee. *Epworth Assembly v Ludington & Northern R*, 236 Mich 565, 573; 211 NW 99 (1926). The *Quinn* rule that the deed's language controls the form of the conveyance has been consistently applied in each of these cases.

In this case, the deed granted "a right of way," and under *Quinn*, a grant of a right of way is a grant of an easement. *Quinn, supra* at 150. This deed, therefore, granted an easement.

Defendant's further arguments that the easement was extinguished by either abandonment or the tax sale cannot be decided by this Court on the record provided. No testimony has been given on these issues; they should be considered on remand. The trial court's determination of the location of the property line, on the other hand, has not been appealed and should stand.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Michael R. Smolenski
/s/ William C. Whitbeck